COMMENTS

The enclosed is responsive to the Examiner's Office Action mailed on

January 12, 2004. At the time the Examiner mailed the Office Action claims 1-

14 and 16-45 were pending. In response the Applicant has: 1) amended claims

7, 8 and 9; and, 2) has not canceled nor added any claims. As such claims 1-14

and 16-45 remain pending. The Applicant respectfully requests reconsideration

of the present application and the allowance of all claims.

The Examiner rejected claims 7, 8 and 9 as being indefinite under 35 USC

112, para. 2 for having antecedent basis flaws. The Applicant has amended

each of claims 7, 8 and 9 to cure these antecedent basis flaws and respectfully

submits that each of claims 7, 8 and 9 as present amended comply with

requirements of 35 USC 112, para. 2.

The Examiner rejected independent claim 16 under 35 USC 102(b) as

being anticipated by U.S. Patent No. 5,878,228 (hereinafter "Miller"). "To

anticipate a claim, the reference must teach every element of the claim" MPEP

2131. Independent claim 16 recites (emphasis added):

> 16. A method, comprising:
> a) generating, at a client, a request for an action to a be
> performed by a server to a data object, said data object being
> maintained by said server;
> b) sending an **initial request message** from said client to said
> server over a network, wherein said initial request message asks
> for a first portion of a response to said request, wherein said
> **initial request message** further comprises:
>> 1) a description of said action;
>> 2) a description of said data object;

<u>3) a first limit that defines the maximum amount of data</u>
<u>that said server is allowed to send to said client in</u>
<u>answering said initial request message;</u>
<u>4) a second limit that defines a maximum datagram size</u>
<u>that can be formed by said server in said answering said</u>
<u>initial request message;</u>
c) performing, at said server, at least a part of said action to said
data object; and
d) sending a burst of reply messages from said server to said
client over said network in order to provide said answering to said
initial request message, wherein:
1) each reply message within said burst of reply
messages carries a different piece of said asked for first
portion, wherein, each of said different pieces is not
larger than said second limit
and wherein
2) the aggregate of said different pieces is an amount of
data that is not larger than said first limit.

The Applicant respectfully submits that Miller fails at least to disclose the above

emphasized claim language; and that, as a consequence, Miller fails to

anticipate independent claim 16. Therefore independent claim 16 is allowable

over the Miller reference.

According to the Examiner's stated reasoning appearing at pages 15 of the

Office Action mailed 7/16/04:

1) The Applicant's claim language "in answering said initial request

message" can be broadly interpreted as the ongoing transmission that

occurs over time. As such, the maximum amount of data allowed to be

sent by the server at any given time, as part of the on-going transmission,

is defined by the maximum rate specified in the request.

2) The request message as quoted in Col. 5, lines 7-10 includes a parameter for the total amount of data to be sent to the client (as described under request message characteristics in Col. 6 lines 52-56).

The Examiner's first position above is simply not credible. The Examiner is attempting to construct a limitation with respect to time in the Applicant's claim element where none exists. The claim element at issue (the "first limit") simply defines "the maximum amount of data that [the] server is allowed to send to [the] client in answering [the] initial request message". There is no limitation in the claim language itself with regard to the amount of time that the server may spend "in answering the initial request message". Therefore it is impossible for the Examiner to construct a time related limitation and corresponding "rate" from the Applicant's claim language.

With respect to the Examiner's second position, even assuming arguendo that the "NumBytes" parameter described at Col. 6, lines 52-56 of Miller is sufficient to cover the Applicant's "first limit", the "NumBytes" parameter of Miller does not appear in the "initial request message". The NumBytes parameter of Miller appears in the DownloadStart message of Miller (See, Miller Col. 6, lines 36-40) which is the second request message to be send from the client to the server in the scheme taught by Miller.

Specifically, the DownloadStart message of Miller requests the download of a file from the server and is sent after the GetFilesize message of Miller is

sent beforehand (See, Miller Col. 6, lines 8-12). Therefore Miller fails to disclose the sending of a "first limit" as defined in the Applicant's claims in an initial request message sent from the client to the server; and, instead, at best, could only be considered to disclose disclosing a "first limit" as defined in the Applicant's claims in a non-initial request message. Therefore Miller fails to anticipate claim 16 of the present application.

The Examiner's attention is also drawn to each of the remaining independent claims (i.e., claims 1, 28 and 39). Note that each of the remaining independent claims also include "first limit" and "initial request message" claim elements. In light of the above commentary, therefore, the Applicant respectfully submits that each of the independent claims in the present application are patentable over the Miller reference. Moreover, because all independent claims are allowable, all dependent claims are likewise allowable over the Miller reference.

Therefore all claims are allowable over the Miller reference; and, the Applicant respectfully requests the allowance of same.

The Applicant's silence to the dependent claims should not be construed as an admission by the Applicant that the Applicant is complicit with the Examiner's rejection of these claims. Because the Applicant has demonstrated the

patentability of the independent claims, the Applicant need not substantively

address the theories of rejection applied to the dependent claims.

If there are any additional charges, please charge them to our Deposit

Account Number 02-2666. If a telephone conference would facilitate the

prosecution of this application, the Examiner is invited to contact Robert B.

O'Rourke at (408) 720-8300.

Respectfully submitted,

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Dated: 11|16 , 2004
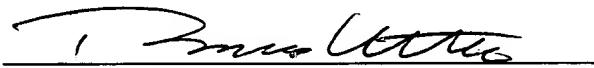
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